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2                   **UNITED STATES DISTRICT COURT**  
3                   **NORTHERN DISTRICT OF CALIFORNIA**  
4                   **OAKLAND DIVISION**  
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6                   IN RE: COLLEGE ATHLETE NIL  
7                   LITIGATION  
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9                   Case No. 4:20-CV-03919-CW  
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12                   **DECLARATION OF ERIK BIERBAUER**  
13                   **OF NBCUNIVERSAL MEDIA, LLC IN**  
14                   **SUPPORT OF OMNIBUS SEALING**  
15                   **MOTION**

16 I, Erik Bierbauer, declare:

17         1. I am Senior Vice President, Litigation at NBCUniversal Media, LLC (“NBC”). I  
18 began working for NBC in 2011. I regularly counsel the NBC Sports Group, a division of NBC. I  
19 make this declaration on my personal knowledge, or upon information and belief where indicated.

20         2. NBC is not a party to this action. I am informed and believe that the parties seek to  
21 file under seal and/or redact certain portions of the University of Notre Dame’s (“Notre Dame”)  
22 highly confidential and competitively sensitive media agreement with NBC (the “NBC  
23 Agreement”<sup>1</sup>) and information related thereto. Accordingly, on behalf of NBC and pursuant to the  
24 protective orders that apply in this case and the U.S. District Court for the Northern District of  
25 California Rule 79-5(e), submit this declaration in support of the parties’ Joint Administrative  
26 Omnibus Motion to Seal (ECF No. 318), as set forth more specifically below.

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28         3. I am informed and believe that Notre Dame produced the NBC Agreement and  
designated it “Network Strictly Confidential - Outside Litigation Counsel Only” pursuant to  
protective orders that apply in this litigation.

<sup>1</sup> *In re NCAA – ND004692.*

DECLARATION OF ERIK BIERBAUER

1       4. Defendants have informed me that highly confidential information from the NBC  
 2 Agreement appears in the expert report of Dr. Daniel A. Rascher (ECF No. 290-2) ("Rascher  
 3 Report") and the reply report of Edwin S. Desser (ECF No. 289-2) ("Desser Reply"). Specifically,  
 4 the portions of the Rascher Report and the Desser Reply listed in the table in paragraph 7, below,  
 5 include references to the highly confidential terms of the NBC Agreement.

6       5. The NBC Agreement sets forth the terms under which NBCUniversal exhibits certain  
 7 Notre Dame football games. It is a highly sensitive business document, the secrecy of which is  
 8 fundamental to NBC's business. It contains non-public financial terms and other terms that are  
 9 negotiated and strictly confidential, including the terms that I understand to be included or  
 10 referenced in the documents that the Plaintiffs have moved to file under seal. Public disclosure of the  
 11 NBC Agreement or the information it contains could damage NBC's business relationships and its  
 12 economic interest in future negotiations. If the terms of the NBC Agreement became public, current  
 13 and potential business partners could use knowledge of terms in the NBC Agreement to gain an  
 14 advantage over NBC in negotiations.

15       6. NBC takes precautions to ensure the secrecy of the NBC Agreement and other  
 16 sensitive business documents. For example, physical copies of the NBC Agreement are kept in  
 17 locations that require authorized NBC badges to access, and are shared only with personnel who  
 18 need to see them. Electronic copies are stored so as to limit access to authorized NBC personnel. The  
 19 NBC Agreement contains a clause that obligates the parties to maintain the NBC Agreement and its  
 20 terms as confidential.

21       7. The table below identifies the information NBC seeks to maintain under seal and/or  
 22 redact, and the compelling reasons to do so.

<b>Document and Location</b>	<b>Compelling Reason(s) for Sealing</b>
1. ECF No. 290-2, Expert Report of Dr. Daniel A. Rascher: Pages 76-77, paragraph 156: sentence beginning with "This" and ending with "Conference," and accompanying footnote 174. [Entry Nos. 150-52]	Paragraph 156 and accompanying footnote 174 contain references to the terms of the NBC Agreement, which are non-public, highly sensitive, and strictly confidential. NBC requests that the references to the terms of the NBC Agreement be maintained under seal to protect their highly confidential and competitively sensitive nature.

28       DECLARATION OF ERIK BIERBAUER

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		Public disclosure of the terms of the NBC Agreement would create a substantial risk of serious competitive, business, and financial harm to Notre Dame and NBC.
2	2. ECF No. 289-2, Reply Report of Edwin S. Desser: Pages 22-23, paragraph 4.3.5: phrase starting with "adding" and ending with "sports," the bottom three lines of the accompanying table, and, in accompanying footnote 71, the phrase beginning with "The Rights Agreement" and ending with a bates number in parentheses, as well as the phrase on page 23 beginning with "Adjustments" and ending with "titles" in parentheses. [Entry Nos. 777-78]	Paragraph 4.3.5 and accompanying footnote 71 contain references to the terms of the NBC Agreement, which are non-public, highly sensitive, and strictly confidential. NBC requests that the references to the terms of the NBC Agreement be maintained under seal to protect their highly confidential and competitively sensitive nature. Public disclosure of the terms of the NBC Agreement would create a substantial risk of serious competitive, business, and financial harm to Notre Dame and NBC.
3	3. ECF No. 289-2, Reply Report of Edwin S. Desser: Page 33, bates number with "ND" prefix. [Entry No. 783]	Page 33 contains references to the terms of the NBC Agreement, which are non-public, highly sensitive, and strictly confidential. NBC requests that the references to the terms of the NBC Agreement be maintained under seal to protect their highly confidential and competitively sensitive nature. Public disclosure of the terms of the NBC Agreement would create a substantial risk of serious competitive, business, and financial harm to Notre Dame and NBC.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. This declaration was executed this 29th day of September 2023 in New York, NY.

—DocuSigned by:  
  
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Erik Bierbauer

28 DECLARATION OF ERIK BIERBAUER

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## **SIGNATURE CERTIFICATION**

I, Christopher S. Yates, am the CM/ECF user whose ID and password are being used to file this Declaration of Erik Bierbauer of NBCUniversal Media, LLC in support of the Joint Administrative Omnibus Motion to Seal. In compliance with Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

Dated: September 29, 2023

Respectfully submitted,

LATHAM & WATKINS LLP

By: /s/ Christopher S. Yates

Christopher S. Yates

Atorneys for Defendant

## The Altantic Coast Conference